



INTERIOR BOARD OF INDIAN APPEALS

Helene Rangel v. Deputy to the Assistant Secretary - Indian Affairs/
Director, (Indian Education Programs)

19 IBIA 44 (10/26/1990)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

HELENE RANGEL,
Appellant

v.

DEPUTY TO THE ASSISTANT
SECRETARY - INDIAN AFFAIRS/
DIRECTOR (INDIAN EDUCATION
PROGRAMS), BUREAU OF INDIAN
AFFAIRS,
Appellee

: Order Docketing, Dismissing, and
: Referring Appeal to Assistant
: Secretary - Indian Affairs
:
:
:
: Docket No. IBIA 91-5-A
:
:
:
: October 26, 1990

On October 25, 1990, the Board received an apparent notice of appeal from Helene Rangel, through counsel, David J. Rapport, Esq., Ukiah, California. 1/ Appellant seeks review of a September 20, 1990, decision of the Deputy to the Assistant Secretary - Indian Affairs/Director (Indian Education Programs), holding that she was not eligible to receive a Bureau of Indian Affairs higher education grant under 25 CFR Part 40.

Under 25 CFR Part 2, decisions of the Deputy to the Assistant Secretary - Indian Affairs/Director (Indian Education Programs) are appealable to the Assistant Secretary - Indian Affairs rather than the Board of Indian Appeals. See 25 CFR 2.20(g); 2.4(e). The Deputy's decision advised appellant that his decision was appealable to the Assistant Secretary. 2/

Under 25 CFR 2.4(e), this Board lacks jurisdiction over appeals from decisions of the Deputy to the Assistant Secretary - Indian Affairs/Director (Indian Education Programs).

1/ It is possible that the notice sent to the Board, even though it appears to be the original, was actually intended to be a copy of an appeal to the Assistant Secretary - Indian Affairs. The Board issues this order to prevent confusion concerning the venue of this matter.

2/ The appeals information in the Deputy's decision, however, was not entirely accurate. It incorrectly implied that appellant's statement of reasons, rather than only her notice of appeal, was required to be submitted within 30 days of her receipt of the Deputy's decision. Further, the decision failed to advise appellant that her notice of appeal should be filed in the Deputy's office, in accordance with 25 CFR 2.9(a); instead, it implied that the notice should be filed in the Assistant Secretary's office. Under 25 CFR 2.7, an appellant's right to appeal continues until correct appeal information is given. Therefore, the Board recommends that the Assistant Secretary accept this appeal even though it may be untimely by the time it reaches him. Cf. Lovelock Paiute Tribe v. Acting Phoenix Area Director, 18 IBIA 249, 250 (1990).

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal from the September 20, 1990, decision of the Deputy to the Assistant Secretary - Indian Affairs/Director (Indian Education Programs) is docketed under the above case number, dismissed for lack of jurisdiction and referred to the Assistant Secretary - Indian Affairs.

//original signed

Anita Vogt
Administrative Judge

//original signed

Kathryn A. Lynn
Chief Administrative Judge